14

D.B. CIVIL SPECIAL APPEAL NO.308/2006.
[HIMMAT LAL VS. STATE OF RAJ & ORS.]

DATED : 15.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.Suresh Shrimali for appellant.
Mr. L.R.Upadhyay P.P.

*****

Heard learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dismissing the Writ Petition filed by the appellant. The facts which are not in dispute are that the disputed land in question, which is ad measuring 22,053 square feet, was originally in possession of Devi Lal father of the petitioner to whom the land was granted on rent by Public Works Department at Rs.28.69 paise per month on 17.11.1953. The said Devi Lal renounced the world and became a saint. Thereafter the present appellant entered the possession of land. On 03.04.1991, the Public Works Department gave a notice under Section 4 of the Rajasthan Public Premises [Eviction of Unauthorised Occupants] Act to the appellant as well as public notice was also given by affixing the notice of termination of tenancy on the premises itself as well as by beat of drums in the locality. In response thereto the

appellant only appeared and urged that he has sent rent from 01.07.1979 to 30.04.84 by a Bank Draft and thereafter again sent rent from September 1979 to June 1987 through Demand Draft. After receipt of eviction notice he has again sent a cheque for rent from September 1979 to April 1991. Considering these facts the Estate Officer found that the applicant has not ever paid rent in time and has paid the rent after receipt of the notice. For this reason the termination of the tenancy was found to be valid and by declaring the appellant petitioner to be authorised occupant directed him to remove his possession vide order dated 23.06.1992.

On appeal before the interim order was passed by the learned District Judge, it appears that the possession came in the hands of the Public Works Department. While the Public Works Department claimed that the appellant has voluntarily surrendered the possession, the appellant claimed that he has not surrendered the possession. The District Judge found that Section 5 of the said Act has not been complied with and the adjournment was denied notwithstanding the appellant had good ground because the counsel was not available for town. For these reasons, the order of the Estate Officer was set aside and it was directed to the Estate Officer that one opportunity be given to the applicant to file his reply and one

opportunity be given to lead evidence and thereafter the case may be decided in accordance with law.

A review application was submitted before the learned District Judge seeking a direction for recovering the possession from the Public Works Department and another an application before the Estate Officer for putting the petitioner back in possession were filed.

Both the applications were rejected. It appears that after the matter was remanded to the Estate Officer, he noticed that since premises has already been evicted and P.W.D. is in possession, the Public Works Department requested not to proceed in pursuance of notice under Section 4 of the said Act. Said notice under Section 4 was discharged. All these proceedings have led to filing of the writ petition which has been dismissed by learned Single Judge inter alia on the ground that since possession of the land has already came with Public Works Department the proceedings under the said Act could not proceed further as the question of eviction has come to an end. Hence this appeal.

Having perused the material placed before us we are of the opinion that the admitted facts by the petitioner-

appellant, he has not paid rent regularly but only after by interval of every 5 or 8 years and he was in occupation of public property at a rent determined in 1953 which too was not paid by him regularly on his own admission was itself a good ground to terminate the tenancy and recover the possession. Before the order of Estate Officer was stayed and set aside the possession of land has come back to the Public Works Department whether voluntarily or before interim order was passed by the Appellate Authority by execution of the order and the Public Works Department having received the vacant possession of the land has desired not to proceed with notice under Section 4 of the Act, there could not have been any justification for restoration of possession in favour of a defaulting person.

We are, therefore, not inclined to interfere with the order passed by the learned Single Judge without deciding the issue about the petitioner's claim to seek restitution in the circumstances of the present case.

Accordingly, the appeal is dismissed.

[CHATRA RAM JAT]J. **[RAJESH BALIA], J.**

mamta